

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 9:23-CR-80101-CANNON

UNITED STATES OF AMERICA,

Plaintiff,

v.

**WALTINE NAUTA, and
CARLOS DE OLIVEIRA,**

Defendants.

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO AMERICAN
OVERSIGHT’S AND KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA
UNIVERSITY’S MOTIONS TO INTERVENE**

The United States of America, by and through the undersigned Assistant United States Attorney, hereby respectfully requests the Court to grant the United States an extension of three days, that is until March 24, 2025, to file its response to the pending motions to intervene filed by American Oversight and Knight First Amendment Institute at Columbia University (“Knight Institute”).

BACKGROUND

On July 27, 2023, at Special Counsel Jack Smith’s (“Special Counsel Smith”) request, a federal grand jury in the Southern District of Florida returned a Superseding Indictment charging the defendants with various crimes related to the alleged retention of national defense information [ECF No. 85].

On July 15, 2024, the Court dismissed the Superseding Indictment, after determining that Special Counsel Smith’s appointment violated the Appointments Clause of the United States Constitution [ECF No. 672].

Special Counsel Smith timely appealed the Court's order dismissing the Superseding Indictment to the United States Court of Appeals for the Eleventh Circuit [ECF No. 673].

On November 26, 2024, at Special Counsel Jack Smith's request, the Eleventh Circuit dismissed the appeal as to then President-Elect and now President Trump (D.E. 81-2).

On or about December 30, 2024, Special Counsel Smith referred this case to the United States Attorney's Office for the Southern District of Florida [ECF No. 714, at ¶¶ 5, 11].

On January 7, 2025, Special Counsel Smith delivered a two-volume confidential Final Report to the Attorney General of the United States. The first volume (Volume I) concerns the investigation and prosecution of criminal charges that were brought in the District of Columbia regarding alleged interference with the lawful transfer of power following the 2020 United States presidential election. Volume I has been released to the public. The second volume (Volume II) concerns the investigation and prosecution of the criminal charges that were brought against the President of the United States, Waltine Nauta, and Carlos De Oliveira in this matter. Volume II has not been released to the public.

When Special Counsel Smith delivered his confidential Final Report to the Attorney General, Walt Nauta and Carlos De Oliveira filed an Emergency Motion to preclude the release of Volume II of Special Counsel Smith's confidential Final Report [ECF No. 679].

On January 8, 2025, American Oversight submitted a request to the Department of Justice under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking access to Volume II of Special Counsel Smith's confidential Final Report.

On January 10, 2025, Special Counsel Smith resigned his post. On January 17, 2025, the United States Attorney for the Southern District of Florida, Markenzky Lapointe, resigned his post.

On January 20, 2025, Merrick Garland concluded his term as the Attorney General of the United States.

On January 21, 2025, this Court enjoined the Attorney General of the United States and the Department of Justice from releasing Volume II outside the Department of Justice, or sharing any information contained in Volume II with anyone outside the Department of Justice (“Injunction Order”) [ECF No. 714]. The Court ordered the parties to file a report within thirty days after full conclusion of all appellate proceedings, advising the Court of any remaining claims or objections to the release of Volume II.

On January 26, 2025, Knight Institute submitted a request to the Department of Justice under the Freedom of Information Act, seeking access to, among other things, Volume II of Special Counsel Smith’s confidential Final Report.

On February 5, 2025, Pamela Jo Bondi was sworn in as the 87th Attorney General of the United States.

On February 6, 2025, the Department of Justice notified Knight Institute that it was prohibited from disclosing Volume II in its entirety based on the Court’s Injunction Order.

On February 10, 2025, American Oversight filed a FOIA action in the United States District Court for the District of Columbia, seeking declaratory and injunctive relief as to Volume II. *See American Oversight v. Department of Justice*, Civil Action No. 25-cv-383 (D.D.C. 2025) (ECF No. 1).

On February 11, 2025, at the request of the current United States Attorney for the Southern District of Florida, Hayden P. O’Byrne, the Eleventh Circuit dismissed the appeal as to Walt Nauta and Carlos De Oliveira (D.E. 113-2).

On February 14, 2025, American Oversight filed an Expedited Motion to Intervene and for Clarification or, Alternatively, Dissolution of January 21, 2025 Order Granting Defendants' Emergency Motion to Preclude Release of Volume II of Special Counsel's Report, seeking to intervene, ostensibly on behalf of the public, to gain access to Volume II of Special Counsel Smith's confidential Final Report [ECF No. 717].

The deadline for the United States to respond to American Oversight's motion to intervene is March 21, 2025 [ECF No. 726].

On February 20, 2025, the Judge presiding over American Oversight's FOIA litigation in the District of Columbia denied American Oversight's motion for injunctive relief based on the Court's Injunction Order. *See American Oversight v. Department of Justice*, Civil Action No. 25-cv-383 (D.D.C 2025) (ECF No. 11).

On February 24, 2025, Knight Institute filed a Motion to Intervene to Seek Rescission of the Court's January 21, 2025 Order and Public Release of Volume II of the Special Counsel's Report [ECF No. 721].

The deadline for the United States to respond to Knight Institute's motion to intervene is March 21, 2025 [ECF No. 726].

On February 28, 2025, undersigned counsel entered an appearance in this matter on behalf of the United States [ECF No. 727].

Undersigned counsel will be out of the District and have limited access to the internet from March 15, 2025 through March 22, 2025. The United States respectfully requests the Court to grant an extension of three days, that is until March 24, 2025, to file its response to the pending motions to intervene filed by American Oversight and Knight Institute.

Local Rule 88.9(a) Conferral

Undersigned counsel conferred with counsel for Walt Nauta, counsel for Carlos De Oliveira, counsel for American Oversight, and counsel for Knight Institute, and is authorized to represent that there is no objection to the requested extension of time.

Respectfully submitted,

HAYDEN P. O'BYRNE
UNITED STATES ATTORNEY

By: /s/Michael D. Porter
Michael D. Porter
Assistant United States Attorney
Florida Bar# 0031149
101 South U.S. Highway 1
Suite 3100
Fort Pierce, Florida 34950
Telephone: (772) 293-0950
Email:michael.porter2@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2025, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by either regular U.S. mail or inter-office delivery.

/s/Michael D. Porter
Michael D. Porter
Assistant United States Attorney